

May 28, 1982

MEMORANDUM

TO: Philip Morris (Barclay) Files
FROM: Jerome I. Chapman *JIC/K*
RE: R. J. Reynolds Meetings at FTC

I received the following report from Champ Mitchell on Thursday afternoon, May 27, concerning the visits made by Sam Witt, Jim Rill and Mitchell to the offices of three Commissioners earlier in the day:

1. Clanton - Commissioner Clanton appeared to be reasonably well informed about the Barclay matter, except that neither he nor any of the other Commissioners have yet seen the consultants' reports.

The focus of the discussion was on remedial action to be taken by the Commission. Clanton stated, apparently more than once, that the discussion proceeds on the assumption that evidence supports the claim of deception -- "And I understand that it does." Mitchell said that Clanton was aware that the consultants were unanimous in their conclusions, but he

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apparently was surprised by the strength of the language used in the consultants' reports, which the Reynolds people showed him for the first time.

Clanton's primary concern was over the ability of the Commission to adopt a holder and to present test results on an interim basis without a rule-making proceeding. The Reynolds people tried to explain to him that the Commission could make such changes without rulemaking, but Champ feels uncertain as to whether they succeeded.

The Reynolds people showed Clanton and the other Commissioners two proposed counter-advertisements, based on the assumption that the Commission will make a public announcement of the fact that the current testing method does not accurately assess Barclay's tar delivery. One ad had new tar numbers in it, and the other one did not. The Reynolds contingent argued that the ad with numbers would be more effective and urged the Commission to come out with new numbers for Barclay promptly.

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Champ stated that he made clear to Clanton, and the other Commissioners, that it was urgent that some action be taken as soon as possible. He said that if the Commission was not in a position to come out with numbers for Barclay right away, it should in any event issue the Philip Morris press release.

I asked Champ whether Clanton's concern that the Commission may have to engage in rulemaking before changing the holder meant that Clanton believed that there had to be a rulemaking proceeding before the Commission could do anything further, or, rather, that Clanton would accept a press release on the issue of deception and only felt the need for a further proceeding on the question of the appropriate remedy. Champ said he was uncertain as to the implications of Clanton's expressed concern.

2. Pertschuk - The Reynolds people next met with Pertschuk's assistant, Rothberg. It was clear that Pertschuk is firmly on the side of Reynolds and PM. The Reynolds people explained their view that

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the most effective remedy would be to obtain new numbers for Barclay, and Rothberg appeared to be sympathetic.

The basic problem that emerged in the discussion with Rothberg was over the issue of Pertschuk's recusal. Rothberg stated that when Pertschuk returns from South America he will make a serious, considered decision on whether he should recuse himself from (i) the Barclay case in particular and possibly (ii) all smoking matters in general. Pertschuk apparently is concerned that he has gone so far to align himself with anti-smoking interests that it may be prudent for him to disqualify himself from all tobacco matters.

3. Bailey - Commissioner Bailey appeared to know the least about the Barclay matter. She apparently asked no questions whatsoever.

Bailey mentioned that Ernie Pepples had been in "several times." Pepples had emphasized the point that the controversy was merely a competitive battle, with the big companies trying to suppress an up-and-coming little guy. The Reynolds people pointed out

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that BAT is the biggest tobacco company in the world. They also stated that any company can make a Barclay-type filter, and that the reason they were not doing so was concern over the dishonesty of the product and the integrity of the Commission's testing program.

At one point, Bailey said that her inclination, when faced with a dispute between two competitors, is to duck. She said, however, that she recognizes that the Commission has to make a decision here, and that the decision must be based on the facts presented. In response to this comment, the Reynolds people emphasized the unanimity and strength of the consultants' reports.

4. Miller - The Reynolds people have an appointment at 10:00 a.m. on June 3 with Chairman Miller. The group representing Reynolds will consist of Ed Horrigan, Sam Witt and Champ Mitchell. Champ said he understands that Miller will have received a copy of the staff's report prior to the June 3 meeting.

cc: Alexander Holtzman, Abe Krash & Harry Katz

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